

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	Facility ID No. 92532
Faith Trinity Assemblies)	NAL/Acct. No. MB-20074141008
)	FRN: 0007879455
Licensee of Station WYZZ(FM))	File No. BRED-20040721AHP
Spencer, Tennessee)	

MEMORANDUM OPINION AND ORDER

Adopted: June 6, 2011

Released: June 7, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration ("Petition") filed by Faith Trinity Assemblies ("Faith Trinity"), licensee of Station WYZZ(FM), Spencer, Tennessee ("Station"). Faith Trinity seeks reconsideration of the Media Bureau's ("Bureau") *Forfeiture Order*¹ in the amount of one thousand five hundred dollars (\$1,500) for Faith Trinity's willful violation of Section 73.3539 of the Commission's Rules ("Rules")² by failing to timely file a license renewal application for the Station. We hereby deny reconsideration and affirm the forfeiture.

II. BACKGROUND

2. On January 30, 2007, the Bureau issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL"),³ proposing a forfeiture in the amount of one thousand five hundred dollars (\$1,500), to Faith Trinity for willfully violating Section 73.3539 of the Rules, based on its failure to timely file a renewal application for the Station. As noted in the NAL, Faith Trinity's renewal application for the Station's license term was due on April 1, 2004, four months prior to the August 1, 2004, expiration date.⁴ Faith Trinity did not file the application until July 21, 2004, and provided no explanation for the untimely filing of the renewal application.

3. In response to the NAL, Faith Trinity submitted a letter on March 16, 2007, requesting cancellation of the proposed forfeiture because: (1) its failure to timely file its renewal application was the result of a mistake in using the Commission's electronic filing system, with which it was unfamiliar; and (2) it is a non-profit entity. The Bureau rejected both arguments as insufficient grounds for cancellation of an NAL in the *Forfeiture Order*, and Faith Trinity timely filed the subject Petition on April 15, 2010.

¹ *Faith Trinity Assemblies*, Forfeiture Order, 25 FCC Rcd 2593 (MB 2010) ("*Forfeiture Order*").

² 47 C.F.R. § 73.3539.

³ *Faith Trinity Assemblies*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1524 (MB 2007). The Commission granted the above-referenced license renewal application on January 30, 2007.

⁴ See 47 C.F.R. §§ 73.1020, 73.3539(a).

4. In its Petition, Faith Trinity once again argues that its mistake in submitting the renewal application online warrants reduction or cancellation, for the first time claims that payment of the \$1,500 forfeiture will cause it financial hardship. In support of the latter argument, Faith Trinity refers anecdotally to a purportedly similar case in which the Bureau granted a substantial reduction of the forfeiture amount.

III. DISCUSSION

5. The Commission will consider a Petition for Reconsideration only when petitioner shows either a material error in the Commission's original order or raises changed circumstances or unknown additional facts not known or existing at the time of petitioner's last opportunity to present such matters.⁵ Faith Trinity has failed to meet this burden.

6. The forfeiture amount for the violation was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ Section 1.80 of the Rules,⁷ and the Commission's *Forfeiture Policy Statement*.⁸ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁹

7. Faith Trinity's Petition in part restates its earlier argument regarding its unfamiliarity with the Commission's electronic filing system.¹⁰ We have previously considered and rejected that argument. We will not grant reconsideration "to debate matters upon which the Commission has already deliberated and spoken."¹¹

8. Faith Trinity also—and for the first time—argues that the forfeiture should be reduced or cancelled because paying the forfeiture amount would cause it significant financial hardship. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹²

9. Typically, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ Here, however, Faith Trinity does not submit a tax return or any comparable showing of its revenues. Rather, it submits two documents titled "Balance Sheet" outlining its assets and liabilities, but

⁵ See 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ See *Forfeiture Order* at 2594-95.

¹¹ *WWIZ, Inc.*, 37 FCC at 686.

¹² See *Discussion Radio, Inc.*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹³ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

neither contains any information about Faith Trinity's revenues. Those documents appear to be unaudited, and there is no indication that they were prepared according to GAAP.¹⁴ They thus fail to meet the standard of "other reliable and objective documentation" sufficient to establish Faith Trinity's current financial status.¹⁵ Accordingly, we find that they cannot be used to support Faith Trinity's claim of its inability to pay. In the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on this basis.¹⁶

10. Finally, Faith Trinity offers an anecdotal account of the case of *Covenant Life Ministries*. Faith Trinity claims that there the licensee was issued an *NAL* in the amount of seven thousand dollars (\$7,000) and that the Bureau reduced the forfeiture amount to five hundred dollars (\$500) "as a result of a discussion" with counsel.¹⁷ In 2010, Commission staff contacted providers of secondary FM service¹⁸ that had received and filed responses to *NALs* for late-filing and unauthorized operation in amounts equal to those assessed full-service stations. In the interest of administrative efficiency, the staff inquired whether those licensees would be interested in paying a reduced amount based on their status as secondary service stations without the Commission's release of a *Forfeiture Order* or any other written disposition. Faith Trinity is also correct that *Covenant Life Ministries*, through counsel, agreed to pay and did in fact pay a forfeiture of five hundred dollars (\$500) pursuant to this effort.¹⁹ However, no *Forfeiture Order* or any other decision showing this reduction was prepared or sent to the stations in question.²⁰ Under Section 0.445 of the Rules,²¹ such an unrecorded disposition lacks precedential value.²² Thus, Faith Trinity's reference to *Covenant Life Ministries* is not probative.

11. Moreover, even if the reduction in *Covenant Life Ministries* had been recorded in a written decision, Faith Trinity's reference to it would be inapposite. The licensee there operated a Low Power FM ("LPFM") Station, and the Bureau routinely reduces forfeiture amounts to \$500 in actions

¹⁴ See Petition, Exhibit A. The documents each purport to detail Faith Trinity's assets and liabilities as of December 31, 2009. However, the two balance sheets each contain very different information as to the amounts of those assets and liabilities. For instance, one document states that Faith Trinity's total assets are \$360,856.26, while the other places the same figure at \$53,463.08.

¹⁵ See *College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508, 5510 (MB 2009) (rejecting licensee's financial hardship argument, finding that a one-page document summarizing its station budget and no information about licensee's finances was an insufficient basis on which to assess the licensee's inability to pay); *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484, 2486 (MB 2009) (same); *Washington and Lee University*, Forfeiture Order, 23 FCC Rcd 15821, 15825 (MB 2008) (same).

¹⁶ While the "Balance Sheets" in this case are insufficient to show financial hardship, balance sheets may in some instances provide sufficient information for effective review of a claim of inability to pay. See *Victory Power & Ministries*, Forfeiture Order, 25 FCC Rcd 17098, 17100 (MB 2010) (finding balance sheets prepared by a certified public accountant and detailing gross revenues for the most recent three-year period sufficient to evaluate a claim of financial hardship).

¹⁷ Petition at 2.

¹⁸ This includes licensees of low power FM, FM translator, and Class D stations.

¹⁹ See electronic mail communication from Konrad E. Herling, Audio Division, Media Bureau, to Mr. Lew Goldman, counsel for *Covenant Life Ministries*, *NAL/Acct. No.* MB-200741410115 sent Friday, April 30, 2010 at 3:23 p.m.

²⁰ There is no written decision in the *Covenant Life Ministries* case beyond the original *NAL*. See *Covenant Life Ministries*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3271 (MB 2007).

²¹ 47 C.F.R. § 0.445.

²² *Id.*

against LPFM Stations.²³ Faith Trinity, however, operates a full-service noncommercial educational station. As a result, the *Covenant Life Ministries* case does not support reconsideration of the *Forfeiture Order* here.

12. We have considered Faith Trinity's Petition in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Faith Trinity willfully violated Section 73.3539 of the Rules. The Bureau previously reduced *sua sponte* the forfeiture amount from \$3,000 to \$1,500;²⁴ we find no other mitigating circumstances that warrant cancellation or further reduction of the forfeiture. We find that the *Forfeiture Order* issued to Faith Trinity is reasonable and consistent with precedent.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by Faith Trinity Assemblies on April 15, 2010, IS DENIED.

14. IT IS FURTHER ORDERED, that a copy of this Memorandum Opinion and Order shall be sent by Certified Mail Return, Receipt Requested, and by First-Class Mail, to: Faith Trinity Assemblies, 12707 Beersheba Highway, McMinnville, TN 37110, and to its counsel, Lewis H. Goldman, Esq., 45 Dudley Court, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²³ See *Keene Foursquare Church d/b/a Hope Chapel*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11030 (MB 2010) (forfeiture for late-filing and unauthorized operation reduced to a total of \$500 due to station's LPFM status); *Life At Its Best*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14520 (MB 2009) (same); *Whidbey Island Center for the Arts*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21674 (MB 2007) (same).

²⁴ See *NAL*, 22 FCC Rcd at 1525.